**MINUTES**

**WV RACING COMMISSION**

**Tuesday, November 28, 2017**

**WV Lottery Conference Room**

The WV Racing Commission met on November 28, 2017 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi, Commissioner Ken Lowe, Jr. and Commissioner Anthony Figaretti. Counsel was represented by Kelli Talbott.

**Approval of the October 17th minutes**

The Commissioners and legal counsel received the minutes from the October 17th meeting prior to this meeting. Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Executive Director’s Report**

**Joe Moore**

Joe Moore stated the Commissioners have the breakdown fatality reports from Charles Town for 2017. They have those for both on-track and all-inclusive. Kelli Talbott has been working on the language for the Legislative agenda for the four items the Commission approved to be sent up to receive approval on that were actually approved by the Secretary’s office and Governor’s office.

**Accountant’s Report**

**Joe Moore**

Joe Moore stated total live handle is down about 12% throughout the first quarter of ’18. Total in-state handle is down 9.75% YTD as compared to FY’17. He is working on preparing the RFQ for the 2018 fiscal audit. This past year was the last year for Suttle & Stalnaker on the 1 plus 2 one-year renewals contract.

**Legal Update**

Kelli Talbott stated she was in Charles Town on October 31st for two Hearings, both drug positive related. Those Hearings have been completed and they are working on the written arguments to file with the Hearing Examiner that are due in December. There is one other outstanding case that needs to be set for Hearing at Charles Town that is a drug positive that she has been working with the permit holder on. She anticipates that Hearing being scheduled sometime in January.

The Thoroughbred Racing Rules are still pending in the Legislature. It’s her understanding that the Legislative Rulemaking Review Committee will be meeting on December 1-3 for a marathon Rule Session and she has not seen an agenda yet but is anticipating the Rule will likely be on the agenda for one of those three days.

Mr. Moore mentioned the Legislation she has been working on and with regard to the Medication Rule Compact, the Mid-Atlantic states that have been working together to come up with Compact Legislation came up with a final product that everyone agreed on and was given out to each of the states. The idea is that each state would pursue that identical Legislation, the Legislation wouldn’t look any different in West Virginia than it would in Delaware or any of the other participating states. It is her understanding that all the other Mid-Atlantic states are on board to pursue this. What she did was essentially take the agreed-upon Legislation that was ironed out amongst all of the states and put it into a Bill format that our Legislature uses. We have it drafted, but obviously we have to have people in the Secretary’s office and the Governor’s office review that product before anything can happen. The drafting of the language was a collaborative effort amongst all of the states that were involved.

**Charles Town Capital Improvement Request – Phase 1 CAFO, $663,467**

Becky Carnefix stated this project is for the capital project “CAFO, or Concentrated Animal Feeding Operation, Phase 1.” The purpose of this project is to install a new process water containment and nutrient management plant to meet updated WVDEP regulations. The preliminary costs for design and testing by their approved Civil Engineer, Greenway Engineering, were included in the first request for approval for this project in July 2014 and ultimately approved by the Commission in August 2014 and they will be submitting requests for reimbursement for expenditures made to date on that portion of the project. The remaining costs for Phase 1 are now available because the project design has been completed and the construction phase of the project bid out. This request for approval is for actual installation of Phase 1 of the project and is in the amount of $663,467.

Chairman Rossi asked how much did the Commission previously approve? Ms. Carnefix replied $500,000. Chairman Rossi then asked if there is any estimate of how much this is costing, totally? Erich Zimny replied the reason why they say it is Phase 1 in this request is because they thought it was going to be cheaper over the life of the project to bid out on individual Phases separately. It’s not going to be $10 million, but it’s not going to be $1 million either. It’s probably going to be in the $3 million range and it’s going to be over a number of years. There will be other Phases to the project. They need this permit to operate.

Mr. Lowe stated it’s interesting that in the time that has elapsed since the first $500,000 was approved, the estimate has gone up approximately $163,000. His question is why was it delayed almost 2 years? Mr. Zimny replied the requirements of the permit and the project changed over the course of those couple years. It wasn’t a matter of waiting made it cost more, it was a matter that they didn’t have the final permit until earlier this year. Mr. Lowe commented about the contract they have accepted or are about to accept, he wouldn’t sign it. There are too many open ends. He would have a cap, a not to exceed number, he would not sign a contract like this. Being stewards of the Capital Improvement Fund, he can’t approve that without knowing what the final number is. If not the final number, there has to be a cap for him to agree to it. Mr. Zimny replied he can get him an estimate, but it’s not going to be exact. Mr. Lowe stated he is suggesting getting a not to exceed number. Mr. Zimny stated part of the problem with that is there’s going to be some trenching that’s dug in the middle of the training track to hold some of the storm water and they’re not going to know until they get there and get digging they could hit a boulder, which is possible because they are going down a good ways, which would change the scope of the project, it’s going to change the cost to them. They can try but he doesn’t know if it’s going to be a not to exceed number, especially because they are bidding out by Phases and there could be multiple parties doing the work. He doesn’t know how common that is with a CAFO project.

Mr. Lowe asked how much money was available in this fund? Mr. Moore replied as of 9/30/17, which is the last quarter that’s been reconciled, there’s approximately $1.1 million available for Capital Improvements at Charles Town and on any given fiscal year, they will have an additional $1 million coming from the Racetrack Video Lottery Fund that would be for their use that year in Capital Improvements. Mr. Lowe added if by chance this project has anything to do with the Chesapeake Bay project, it is his understanding, or his thought, that there might be federal funding available. Years ago when WV’s Governor decided to be part of the Chesapeake Bay situation, other states got millions but for some reason, WV didn’t get any and someone told him years ago it’s because they didn’t ask for it so we need to make certain there is no federal funding out there to pay for part of this. Mr. Zimny replied he has no idea to the answer to that question. He doesn’t know anything about the federal funding process and that would be a question for their facility folks that may know something about it. Chairman Rossi asked if Mr. Zimny could pursue that? Mr. Zimny replied yes, he can ask. Mr. Lowe asked if it is believed there will be no lost racing or training days with this project at any Phase? Mr. Zimny replied on the main track they don’t believe that will be the case, on the training track there might well be. Mr. Lowe asked if they would know the amount of days in advance that may be lost on the training track? Mr. Zimny replied yes. Mr. Lowe asked if they see it affecting anything else racing wise, wagering, etc., that hasn’t already been thought of? Mr. Zimny replied not that he can think of.

Motion was made by Mr. Lowe to table this item until they get some additional information, seconded by Mr. Figaretti. Motion passed.

**Charles Town Capital Improvement Request – Barn Equipment Replacement, $5,663.50**

Becky Carnefix stated this project is for Barn Speaker Lines and Equipment Replacement. This equipment was damaged during a storm in July and the paging system is non-functional in half of the barns area. The company that originally installed the system should be the sole source to repair and replace it. The request is in the amount of $5,663.50 and she recommends for approval.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Charles Town Capital Improvement Request – Mutuels Currency Counters, $4,450**

Becky Carnefix stated this project is for Mutuels Currency Counters. This is a sole sourced project as it matches the existing currency counters in use at the property. The request is for the amount of $4,450 and that does include a $1,000 discount for the trade-in of the old counters. She has reviewed documentation submitted and recommends for approval.

Mr. Lowe stated he liked the fact there was a credit given for the trading in of the old equipment and he hopes that is a trend. Motion was then made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

**Wheeling Island request to approve 2018 Live Race Calendar – 268 Days**

Joe Moore stated the Commissioners have for their approval the 2018 Live Race Calendar from Wheeling Island, as well as their wagering formats. They’ve detailed out their race cards, as well as their Lucky North 5 on Fridays and Saturdays and their holiday performance schedule. He received an email yesterday from Steve Sarras stating that the WV Kennel Owners Association and the kennels at Wheeling Island were agreeable to these proposed dates. Mr. Figaretti asked how many days is the 268 that are being requested off from 2017? Ben Travis replied just a couple. Their schedule for 2018 is what they are currently running, with the only difference being the Lucky North 5 races that are being ran on Sundays and moved those to Saturdays.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

**Wheeling Island request to approve 2018 Kennel Contracts – 13**

Joe Moore stated he provided the Commissioners, for their review, the actual contract that Wheeling Island has with the kennels, as well as the signature pages of each of the 13 kennels for approval at Wheeling Island. Mr. Lowe stated they have 13 kennels now, do they have any more in line? Ben Travis replied right now they are going through a greyhound shortage and are down to 12 kennels. They had 15 last year and had a couple that didn’t renew and one that just couldn’t make it financially. They were lucky to get one earlier this year so they are going to have one more kennel heading into next year, which takes them to 13. He’d like to have it back to 15. Mr. Lowe asked if there is anything the Commission can do to help them get to 15? Mr. Travis replied this industry has shrunk a lot and everybody in the country knows he has openings. Mr. Lowe asked Mr. Travis what he would compare Wheeling Island to, what other track in the country? Mr. Travis replied if he was going to view that in terms of purses available, Southland would be number 1 and then it would be between Naples and Wheeling for number 2. After that, the purses really start going down. He would rate Wheeling as number 2 in the country and competition there is really tough. Mr. Figaretti asked what is the solution to get more kennels? Mr. Travis replied one of the biggest things he hears is that people don’t want to bring their operations here only to see that they are going to be done racing in 6 months. Mr. Figaretti stated he’s heard the same thing and shouldn’t Delaware North do something about stopping that rumor? Mr. Travis stated they made a huge investment into the racing side just this year, almost $500,000 they’ve spent already this year and they’re not done. There is a renewed commitment to racing at Wheeling. Mr. Figaretti asked if they increased the purses there, would that bring in more kennels? Mr. Travis replied it would certainly help. Mr. Figaretti asked Mr. Moore for suggestions on how to raise the purses at Wheeling Island? Mr. Moore replied in today’s environment, as a Commission of the State, your avenue and the industry’s avenue is to lobby the Legislators to either appropriate purse funds, there are avenues that are in discussion of new wagering types. All of this takes Legislative changes. The bulk of the purse money is derived from Lottery activities at the Association. A portion of it is statutorily set as a percentage of those activities and a portion of it is appropriated by the State Legislature each year. There is an amount of funds that is derived from pari-mutuel wagering that would flow into the purse funds so should an Association take a stance of making improvements for the betting public and that increases wagering exponentially, they are going to get a small percentage of that money back into their purse funds from those pari-mutuel wagers. The bulk of the money flowing through the purse funds, for both thoroughbred and greyhound racing, comes from the Lottery activities at the track, and that is all statutorily set. Mr. Lowe asked Mr. Travis how much of their handle comes from locals compared to simulcast? Mr. Travis replied the export is 75% of their handle.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

**Charles Town request for approval of 2018 race calendar – 220 Live race days**

Joe Moore stated what’s before the Commission is the 2018 request that is a statutory mandate that the Association request 220 days in their live race calendar.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

**Charles Town request to reduce live race days to 162**

Joe Moore stated this is Charles Town’s request for a reduction in race days to a total of 162 days. The Commissioners have the live race calendar, as well as the Charles Town HBPA’s letter agreeing to 162 days. So, what’s before the Commission today is to approve the Executive Director to start the process of reducing race days. What this process entails is if the Commission approves this, we have to mail out letters to certain parties that are affiliated with both Charles Town, the horsemen and the pari-mutuel clerks, to notify them there has been a request to reduce race days from the 220 required down to 162. Then there is a 10-day period for which these individuals are allowed to object. If there is no objection, in a future meeting the Commission will approve the requested 162 race days. Should we receive an objection from any of those parties, the Commission will have to hold a Hearing in Jefferson County and hear from basically anyone that wants to speak to the matter, and then come to a determination of what an appropriate number of race days would be. Mr. Lowe stated the horsemen have already approved the 162 days and it is his understanding that should additional monies be made available, we would come back and revisit this and possibly go to more racing days.

Nelson Robinson asked what statutory reasoning did they use to make the request to reduce race days? Mr. Moore replied the letter states for purse fund projections that a conservative decision to run 162 days is in the best interest of racing instead of slashing purse funds further, which would have a detrimental effect upon the industry. Mr. Robinson stated he thinks the statutory requirements for reducing race days is specific. Ms. Talbott replied she’s familiar with that statute and once the process has taken place that Mr. Moore described and it comes back before the Commission, they can discuss it then, upon what grounds the Commission can authorize a reduction of days. Mr. Robinson stated he’s not suggesting to debate it he’s suggesting the statutory requirements that are in place, that request does not meet the specific areas of reducing race days. Ms. Talbott replied we’ve been down this road before and she has given the Commission advice upon what grounds they can approve a reduction of days and she understands what Mr. Robinson is saying, but she does not agree with him. Mr. Robinson stated purse money is not a reason to reduce race days according to the specifics in the statute.

Motion was made by Mr. Lowe for approval of the Executive Director to begin the process of reducing race days, seconded by Mr. Figaretti. Motion passed.

**Mountaineer Park request for approval of 2018 race calendar – 210 Live race days**

Joe Moore stated similar to Charles Town’s request of 220 days, the statute requires each year that Mountaineer Park approach the Commission and request 210 live racing days. So, what is before the Commission today is the approval of that race calendar.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

**Public Comments**

Jami Poole, Mountaineer Park HBPA, stated as President he would ask for any reduction of days with a 5-day card or lowering the purses not be accepted by the Commission for Mountaineer. The HBPA is against it and the purse structure is a big issue because it drops number of horses in races, which drops the export, which makes people leave. Lowering the purses is a big issue with what it does to the industry.

**Executive Session – MP Employee Status, L. Dupuy Grievance**

Motion was made by Mr. Figaretti to go into Executive Session, seconded by Mr. Lowe. Motion passed.

Motion was made by Mr. Figaretti to come out of Executive Session, seconded by Mr. Lowe. Motion passed.

**Adjournment**

Motion was made by Mr. Figaretti to adjourn, seconded by Mr. Lowe. Meeting adjourned.